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C O N F I D E N T I A L SECTION 01 OF 02 MANILA 000468

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TAGS: PHUM PREL KCRM MOPS RP

SUBJECT: MELO COMMISSION CALLS FOR COMMAND RESPONSIBILITY  
FOR EXTRAJUDICIAL KILLINGS

REF: MANILA 458

Classified By: Pol/C Scott Bellard, reasons 1.4 (b) and (d)

¶1. (C) Summary. The Melo Commission's report to President Arroyo emphasized the need to ensure command responsibility over errant military elements, and suggested some practical ways to do this. The Commissioners see their role as essentially over, with no additional budget or offices, apart from upcoming briefings to UN and EU Special Rapporteurs. They expressed appreciation for U.S. support and urged Embassy formally to seek a copy of the report and to bring speakers to the Philippines to discuss the concept of command responsibility. End Summary.

¶2. (C) In their first meeting with non-Cabinet officials since completing their report, retired Supreme Court Justice Jose Melo -- chairman of the Melo Commission created by President Gloria Macapagal Arroyo in 2006 to provide policy recommendations on extrajudicial and unexplained killings -- and Commissioner Nelia Gonzalez, accompanied by secretariat member Attorney Rogelio Vinluan, briefed Pol/C and Justice Attache on the conclusions of the Commission as presented to President Arroyo and about 20 members of the Cabinet on January 29. The meeting, which Embassy requested, had required the explicit blessing of both Malacanang and the Department of Foreign Affairs, unlike earlier meetings with emboffs. A staff member of the Office of the Undersecretary of Foreign Affairs for Special Concerns sat in on the meeting at the Chancery.

Command responsibility

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¶3. (C) Justice Melo emphasized that the primary conclusion and recommendation of the Commission was that the Philippines must ensure command responsibility for extrajudicial killings conducted by members of the military, and must destroy the internal culture that views members of leftist groups as "enemies of the state" against whom such killings are not only tolerated but encouraged. The 86 page report -- which Justice Melo personally wrote -- explained in some detail the concept of command responsibility, which holds accountable not only those who commit a crime but also anyone who has information about such crimes and those in positions of authority who should have known. It also explained the emerging doctrine of state responsibility.

¶4. (C) Justice Melo noted that, in meetings with the Commission, Armed Forces of the Philippines Chief of Staff General Esperon and now-retired Major General Palparan -- the latter, against whom many cases were alleged -- had claimed that they could not "control" troops under their command who might engage in such illegal behavior. MG Palparan even acknowledged to the Commission that he "might have

encouraged" such killings, but claimed that those were the "individual responsibility" of whoever committed the killings. General Esperon admitted that it would be acceptable for members of the armed forces to "neutralize" any "enemies of the state," but claimed that neutralization did not necessarily mean murder.

¶15. (C) The Commission's report explicitly noted that there was no clear evidence against MG Palparan or any other individual senior officers, and did not call for charges against any individual. Justice Melo underscored that the Commission's mandate had not been to investigate or solve specific cases, but rather to "focus and prioritize."

Recommendations

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¶16. (C) In the full report (of which the President received five copies) and summary presentation (of which Cabinet members present received a copy) -- all of which were collected by Malacanang at the end of the meeting "to prevent leakage" -- the Commission urged:

- enactment of a statute to ensure command responsibility for members of the armed forces;
- creation of an independent civilian investigative body attached to the military, similar to the U.S. model;
- improvements to and better funding of the government's witness protection program;
- enhanced cooperation between police and prosecutors, so that prosecutors can request additional evidence before accepting or rejecting any charges filed;
- designation by the Supreme Court of special courts to handle extrajudicial killings;
- expedited prosecutions;

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- appointment of a special Presidential-level Fact Finding team to investigate the Department of National Defense;
- training within the armed forces to eradicate thinking about "enemies of the state" as fair game for killing; and,
- improvements in the capabilities of the Philippine National Police and National Bureau of Investigation, including modernization and creation of databases.

No constraints, but no clear future

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¶17. (C) Justice Melo and Commissioner Gonzalez both said that they felt no constraints upon their ability to examine this subject or limitations on what their report should contain. They noted, however, that the Commission had now done all it could, unless additional witnesses come forward, despite President Arroyo's public call for them to continue to offer ideas and recommendations. However, they no longer have any office space or budget. Their hope had been that, once the report became public, the families of victims would be encouraged by the credibility of this effort and volunteer to testify. They expressed puzzlement that Malacanang had "for the meantime" decided to keep the exact contents of the report's recommendations classified.

¶18. (C) They also noted that they did not find credible the claims by the military -- as well as the PNP's Task Force Usig -- that the Communist Party of th Philippines/New People's Army were responsible or many of the killings. Even if the CPP/NPA had committed killings, the Commission decided to fous on how to rein in the military as "agents of the state" with access to lethal force.

¶19. (C) ustice Melo speculated that President Arroyo may b reluctant to release the report because she feas the concept of command responsibility could trce back directly to her, notably in any future impeachment effort. Attorney Vinluan cited a legalprecedent involvinglate President Marcos havingbeen held accountable for human rights abuses. Thy expressed a small hope nonetheless that Presidnt Arroyo will

show true political will and insis that all commanders take responsibility and ensre an end to any military involvement in such kilings.

¶10. (C) Justice Melo added the Malacanng had now also agreed that the Commission couldbrief the UN Special Rapporteur on Extrajudicial illings, who will visit during the week of Februry 12, as well as an expected EU Special Rapportur

What the U.S. can do

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¶11. (C) Justice Melo urged that the U.S. in particular help by:

- formally requesting a copy of the report via the Department of Foreign Affairs;
- bringing in speakers on the topic of command responsibility in the U.S. system, and having Ambassador raise in her public comments;
- bringing in speakers on the prosecution of war crimes, i.e. from the Balkans;
- continuing to demonstrate our concern at all levels of government and calling for genuine resolution of these incidents to bring all culprits to justice.

Comment

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¶12. (C) The members of the Melo Commission are respected, credible individuals, and the creation of this Commission reflects well upon President Arroyo. They were clearly frustrated not to have elicited more cooperation either from the military or from families of victims, as well as clearly not convinced that much action will result from their initial efforts. They particularly expressed appreciation for the encouragement and support the Embassy has provided over the past several months, as well as for our initiative in convincing Malacanang and the Department of Foreign Affairs to let them brief us. The steps they outlined are logical ones for the U.S. to pursue, in coordination perhaps with the European Union and other key partners.

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